

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ERIC VON-RUSSELL MITCHEL,

Plaintiff,

V.

BARBARA BELL, Et Al.,

Defendants.

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Civil Action No. 4:19-cv-048-O

**ORDER ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

This Court referred the case to the magistrate judge for pretrial management on July 3, 2019. ECF No. 7. On August 2, 2019, Defendant Sherri Wagner filed her Motion to Dismiss and Brief in Support (ECF No. 12), and on August 12, 2019, Barbara Bell filed her Motion & Brief to Dismiss (ECF No. 14). Plaintiff Eric Von-Russell Mitchel responded thereto, including filing a Motion for Summary Judgment within his response, and a “Motion for Leave to File and [sic] Amended Complaint.” (ECF Nos. 24, 27). Defendants replied thereto. ECF Nos. 25, 26, 28, 29.

On January 9, 2020, Magistrate Judge Ray issued a findings, conclusions, and recommendation recommending that Defendants’ motions to dismiss be granted and that Plaintiff’s motions for summary judgment and for leave to amend be denied. ECF No. 30.

Subsequently on January 16, 2020, Plaintiff Mitchel filed a motion for extension of time to file objections to the magistrate judge’s findings, conclusions, and recommendation. ECF No. 31. Mitchel then filed, on January 24, 2020, written objections to the findings, conclusions and recommendation of the magistrate judge. After review and consideration, the motion for extension will be granted such that the Court has reviewed and considered the written objections to the magistrate judge’s report.

A district court must determine **de novo** any portion of the magistrate judge's conclusions and recommendations on dispositive matters to which the parties have filed specific, written objections. *See* 28 U.S.C. § 636(b)(1)(c); Fed. R. Civ. P. 72(b); *Parks v. Collins*, 761 F.2d 1101, 1104 (5th Cir. 1985). On the magistrate judge's rulings on nondispositive matters, a district court reviews a magistrate judge's rulings under a "clearly erroneous" standard; however, the *de novo* standard applies to a magistrate judge's legal conclusions. *See* Fed. R. Civ. P. 72(a); *see also Barrow v. Greenville Indep. Sch. Dist.*, 202 F.R.D. 480, 481-82 (N.D. Tex. 2001). Utilizing the applicable standard of review, the district court may accept, reject, or modify, in whole or in part, the proposed findings and recommendations. *See* Fed. R. Civ. P. 72.

The Court has made a **de novo** review of the following matters in the above-styled and numbered cause:

1. All pleadings, motions, and the record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on January 9, 2020 (ECF No. 30) ;
3. The Plaintiff's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on January 24, 2020 (ECF No. 33); and
4. The response to the written objections filed by Defendant Wagner (ECF No. 34).

The Court, after **de novo** review, concludes that the Plaintiff's objections must be overruled, that the findings and conclusions of the magistrate judge are correct, and that they are accepted as the findings and conclusions of the Court.

It is therefore **ORDERED** that Mitchel's motion for an extension of time (ECF No. 31) is **GRANTED** such that the Court has considered and reviewed Mitchel's written objections filed January 24, 2020.

It is further **ORDERED** that Mitchel's Motion for Summary Judgment (ECF No. 24 at 16-23 and 33-40) is **DENIED**.

It is further **ORDERED** that to the extent that Mitchel's Motion for Leave to File and [sic] Amended Complaint (ECF No. 27), is construed as a motion for leave to file an amended complaint and not as a mislabeled response to Defendants' Motions to Dismiss, such motion is **DENIED**.

It is further **ORDERED** that Defendants Sherri Wagner's and Barbara Bell's motions to dismiss (ECF Nos. 12 and 14), are **GRANTED** such that all Plaintiff's claims against Defendants Sherri Wagner and Barbara Bell are **DISMISSED WITH PREJUDICE** for the alternative reasons set forth in the magistrate judge's findings, conclusions, and recommendation, including **DISMISSAL** of the claims **with prejudice** to being asserted again until the *Heck v. Humphrey*, 512 U.S. 477 (1994) conditions are met. *See Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996) (per curiam).

SO ORDERED this 7th day of February, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE